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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 AMRIT KOHLI,

13 Plaintiff,

14 v.

15 SAN FRANCISCO POLICE
16 DEPARTMENT,

17 Defendant.

Case No. 13-cv-04305 NC

**ORDER GRANTING MOTION TO
DISMISS WITH LEAVE TO
AMEND; ORDER TO SHOW CAUSE
WHY COURT SHOULD NOT
DISMISS FOR FAILURE TO
PROSECUTE**

18 Re: Dkt. No. 9

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21 This action arises from allegedly improper arrests and mental health detentions
22 executed by the San Francisco Police Department. Pro se plaintiff Amrit Kohli brings suit
23 under 42 U.S.C. § 1983 for federal civil rights violations and under California law for civil
24 rights violations, false imprisonment, defamation, intentional infliction of emotional
25 distress, and negligent infliction of emotional distress. The City and County of San
26 Francisco move to dismiss under Federal Rule of Civil Procedure 12(b)(6) or, in the
27 alternative, for a more definite statement under Rule 12(e). The issues before the Court are
28 (1) whether Kohli alleges sufficient facts to plead his § 1983 claim and state law claims, and

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(2) whether the City is statutorily immune from the defamation, intentional infliction of emotional distress, and negligent infliction of emotional distress claims. Because Kohli does not allege sufficient facts to plausibly plead the federal and state law claims, and because it is unclear whether the City is immune from the defamation, intentional infliction of emotional distress, and negligent infliction of emotional distress claims on the facts of the complaint, the Court grants the City's motion to dismiss with leave to amend. Kohli has 28 days to properly amend his complaint. If Kohli fails to do so, the Court may dismiss his case with prejudice.

I. BACKGROUND

A. Kohli's Complaint

Kohli alleges that the City is liable for civil rights violations, false imprisonment, defamation, intentional infliction of emotional distress ("IIED"), and negligent infliction of emotional distress ("NIED"). Dkt. No. 1 at 1. Kohli brings his claims under 42 U.S.C. § 1983 and California Civil Code § 52.1, alleging that the SFPD wrongfully arrested and detained him multiple times under California's Welfare and Institutions Code § 5150 without justification, labeled him a terrorist on the basis of his race and nationality, committed police brutality by violating his liberty and civil rights, targeted him on multiple occasions due to his race, nationality, and disability, misused their power, and knew that he suffered from mental health problems. *Id.* at 1-4, 6. Kohli also alleges that the SFPD falsely imprisoned him by taking his liberty. *Id.* at 9. Kohli further states that he was defamed and evicted because the SFPD, believing that Kohli was a terrorist with explosives, closed off Kohli's apartment building for over three hours and arrested him in front of his neighbors and the community. *Id.* at 8. Finally, Kohli alleges that the City is liable for IIED and NIED because Kohli lost his residence, reputation, and peace of mind, and suffered emotional distress that made his mental health disability worse after the SFPD intentionally harassed and embarrassed him in front of the community. *Id.* at 9-10.

B. The City's Motion to Dismiss

The City moves to dismiss all of Kohli's claims or, in the alternative, for a more

definite statement. Dkt. No. 9 at 5. First, the City contends that Kohli's § 1983 claim should be dismissed because Kohli fails to plead sufficient facts to show that a constitutional violation occurred and Kohli fails to allege that a municipal practice or policy caused the violation. Dkt. No. 9 at 5. Second, the City argues that Kohli's false imprisonment claim should be dismissed because Kohli alleges insufficient facts to show that an arrest occurred. *Id.* Even if an arrest occurred, the City argues that the facts alleged in the complaint support probable cause for an arrest. *Id.* Finally, the City contends that the defamation, IIED, and NIED claims should be dismissed because police officers and the city are statutorily immune from such claims under California Government Code §§ 815.2 and 821.6. *Id.*

C. Procedural History

Kohli failed to respond to the City's motion to dismiss. Kohli instead filed for voluntary dismissal. Dkt. No. 12. The Court lacked jurisdiction to grant Kohli's motion for voluntary dismissal because Kohli had not consented to the jurisdiction of a magistrate judge. Dkt. No. 13. The Court therefore ordered Kohli to consent to or decline jurisdiction within 28 days. *Id.* at 2. Kohli consented to the jurisdiction of a magistrate judge. Dkt. No. 16. Kohli then asked for a continuance of the motion hearing, claiming that he no longer wished to dismiss his case, but that health problems prevented him from prosecuting the case. Dkt. No. 17. The Court did not grant a continuance. On January 8, 2014, Kohli failed to appear at the hearing on the City's motion to dismiss. Dkt. No. 19.

D. Jurisdiction

This Court has federal question jurisdiction under 28 U.S.C. § 1331 to hear Kohli's § 1983 claim and supplemental jurisdiction under 28 U.S.C. § 1367(a) to hear Kohli's state law claims. All parties have consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636(c).

II. LEGAL STANDARD

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a plaintiff must plead his claim with sufficient specificity to "give the defendant fair notice of

1 what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550
2 U.S. 544, 555 (2007). “To survive a motion to dismiss, a complaint must contain sufficient
3 factual matter, accepted as true, to state a claim to relief that is plausible on its face. A
4 claim has facial plausibility when the plaintiff pleads factual content that allows the court to
5 draw the reasonable inference that the defendant is liable for the misconduct alleged.”
6 *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (citation omitted) (internal quotation marks
7 omitted). A court is not required to accept as true conclusory allegations, unreasonable
8 inferences, or unwarranted deductions of fact. *Manzarek v. St. Paul Fire & Marine Ins.*
9 *Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). If a complaint lacks facial plausibility, a court
10 must grant leave to amend unless it is clear that the complaint’s deficiencies cannot be
11 cured by amendment. *Gompper v. VISX, Inc.*, 298 F.3d 893, 898 (9th Cir. 2002).

12 III. DISCUSSION

13 A. Section 1983

14 Kohli alleges insufficient facts to state a claim under § 1983. “To state a claim under
15 § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws
16 of the United States, and must show that the alleged deprivation was committed by a person
17 acting under color of state law.” *W. v. Atkins*, 487 U.S. 42, 48 (1988). A plaintiff alleging a
18 municipal violation of § 1983 must further show that “action pursuant to official municipal
19 policy of some nature caused the constitutional tort.” *Monell v. Dep’t of Soc. Servs. of City*
20 *of New York*, 436 U.S. 658, 691 (1978); *Bd. of Cnty. Comm’rs of Bryan Cnty., Okl. v.*
21 *Brown*, 520 U.S. 397, 404 (1997) (“The plaintiff must also demonstrate that, through its
22 *deliberate* conduct, the municipality was the ‘moving force’ behind the injury alleged.”);
23 *Clouthier v. Cnty. of Contra Costa*, 591 F.3d 1232, 1249-50 (9th Cir. 2010).

24 Although Kohli concludes that he was wrongfully detained and discriminated against
25 on the basis of race, nationality, and mental health disability, such conclusory allegations do
26 not provide sufficient factual content to allow the Court to reasonably infer that a
27 constitutional violation occurred. Facts specifying when Kohli was arrested and detained,
28 where the incidents occurred, which officers were involved, how the events unfolded, and

the basis for alleging discriminatory conduct are absent from Kohli's complaint. Further, Kohli fails to allege that police conduct was the product of a municipal practice or policy and does not provide factual support for such an allegation. Without specific facts detailing a particular incident and identifying a municipal policy, Kohli's complaint fails to plead a plausible § 1983 claim from which relief can be granted. The Court therefore grants the City's motion to dismiss the § 1983 claim, but gives Kohli leave to amend if he can plead facts showing that (1) a violation of the Constitution and laws of the United States occurred and (2) a person acting under color of state law committed the violation pursuant to a municipal practice or policy.

B. California Civil Code § 52.1

Kohli fails to allege sufficient facts to plead a plausible claim under California Civil Code § 52.1. Section 52.1 provides a cause of action for persons who have suffered interference with their rights under federal or California law:

Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision (a), may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages, including, but not limited to, damages under Section 52, injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured.

Cal. Civ. Code § 52.1(b). Kohli alleges the same facts to support his § 52.1 claim as he does to support his § 1983 claim. For the same reasons that the factual content is insufficient to plead a § 1983 claim, it is also insufficient to plead a § 52.1 claim. Because Kohli does not allege facts with specificity, the Court is unable to make a reasonable inference based on the complaint that a violation of federal or state law occurred. The Court therefore grants the City's motion to dismiss the § 52.1 claim, but gives Kohli leave to amend if he can correct these factual deficiencies.

C. False Imprisonment

Kohli alleges insufficient facts to plead false imprisonment. Under California law, a "[p]olice officer who makes an arrest without a warrant and without justification may be

1 held civilly liable for false arrest and imprisonment.” *Dragna v. White*, 289 P.2d 428, 429-
2 30 (Cal. 1955); *Asgari v. City of Los Angeles*, 937 P.2d 273, 281 (Cal. 1997) (“Under
3 California law, a police officer may be held liable for false arrest and false imprisonment . .
4 . .”). A city may be liable for false imprisonment if the officer acts within the scope of his
5 employment when he falsely arrests a plaintiff. Cal. Gov’t Code § 815.2(a) (“A public
6 entity is liable for injury proximately caused by an act or omission of an employee of the
7 public entity within the scope of his employment if the act or omission would, apart from
8 this section, have given rise to a cause of action against that employee or his personal
9 representative.”). In order to plead a cause of action for false imprisonment, a plaintiff must
10 allege “that there was an arrest without process, followed by imprisonment and damages.”
11 *Dragna*, 289 P.2d at 430; *Asgari*, 937 P.2d at 281 (“The tort of false imprisonment is
12 defined as the unlawful violation of the personal liberty of another. The confinement must
13 be without lawful privilege.” (citation omitted) (internal quotation marks omitted)).

14 Kohli fails to plead a false imprisonment claim that is plausible on its face. Kohli
15 alleges the following: he was “wrongfully arrested and placed under 5150 detention
16 multiple times by the [SFPD] with no reasonable justification”; the SFPD took his liberty
17 by wrongfully arresting and detaining him; he was evicted as a result of police conduct; and
18 the SFPD misused their power. Dkt. No. 1 at 1-2, 6. These allegations are insufficient for
19 several reasons. First, Kohli’s allegations are not specific enough to allow the Court to
20 reasonably infer that instances of arrest and detention occurred. Missing from the
21 complaint are facts regarding the time and location of arrests, which individuals were
22 involved, and the circumstances surrounding the events. Second, Kohli’s conclusory
23 statement that detention occurred “with no reasonable justification” lacks factual support to
24 show that officers acted without probable cause. Third, the complaint fails to adequately
25 allege facts showing a causal relationship between the false imprisonment and damages
26 from eviction, such as the proximity of the two events in time and dialogue between
27 landlord and tenant showing that eviction occurred as a result of police conduct. Fourth, the
28 complaint does not specify how and why Kohli suffered damages as a result of eviction.

1 Finally, Kohli fails to plead a plausible claim against the city because he does not allege that
2 the officers acted within the scope of their employment when they arrested and detained
3 Kohli and does not provide facts supporting such an allegation. Because the factual content
4 of Kohli's complaint is insufficient to plausibly plead false imprisonment, the Court grants
5 the City's motion to dismiss the claim, but gives Kohli leave to amend if he can correct
6 these pleading deficiencies.

7 **D. Defamation, IIED, and NIED**

8 Kohli alleges insufficient facts to plead plausible claims for defamation, IIED, and
9 NIED, but the Court gives leave to amend because it is not clear from the complaint that the
10 City is immune from liability for these causes of action under California Government Code
11 §§ 821.6 and 815.2. Section 821.6 immunizes a public employee from liability "for injury
12 caused by his instituting or prosecuting any judicial or administrative proceeding within the
13 scope of his employment, even if he acts maliciously and without probable cause." Cal.
14 Gov't Code § 821.6. Section 815.2 immunizes public entities from liability when their
15 employees are immune from liability. Cal. Gov't Code § 815.2(b) ("Except as otherwise
16 provided by statute, a public entity is not liable for an injury resulting from an act or
17 omission of an employee of the public entity where the employee is immune from
18 liability."). Although the City correctly states that § 821.6 immunizes public employees
19 from liability for defamation, IIED, and NIED under certain circumstances, the cases cited
20 in the City's motion to dismiss, *Gillan v. City of San Marino* and *Asgari v. City of Los*
21 *Angeles*, are inapposite because they do not address the application of § 821.6 to
22 defamation, IIED, and NIED claims arising from arrests. *Gillan v. City of San Marino*, 55
23 Cal. Rptr. 3d 158, 172-73 (Cal. Ct. App. 2007) (holding that § 821.6 immunized defendant
24 officers from liability for defamation and IIED arising from post-arrest press release);
25 *Asgari*, 937 P.2d at 283 (holding that § 821.6 immunized defendant officer from liability for
26 damages caused by plaintiff's post-arraignment incarceration). The City is immune from
27 liability under §§ 821.6 and 815.2 only if arrests and 5150 detentions fit within the meaning
28 of "instituting or prosecuting any judicial or administrative proceeding."

Arrests do not generally constitute the “instituting or prosecuting” of judicial proceedings. *Blankenhorn v. City of Orange*, 485 F.3d 463, 488 (9th Cir. 2007). California courts have extended the meaning of “instituting or prosecuting” in § 821.6 to encompass the investigation of crime “[b]ecause investigation is an essential step toward the institution of formal proceedings[.]” *Amylou R. v. Cnty. of Riverside*, 34 Cal. Rptr. 2d 319, 321 (Cal. Ct. App. 1994) (internal quotation marks omitted). However, “section 821.6, as it applies to police conduct, is limited to actions taken in the course or as a consequence of an investigation.” *Blankenhorn*, 485 F.3d at 488. Because arrests are generally considered to be independent of investigations, arrests do not normally fall within the meaning of “instituting or prosecuting” a judicial proceeding. *Id.* (“Because [plaintiff’s] assault and battery, negligence, and intentional infliction of emotional distress claims are based on acts that allegedly happened during his arrest, not pursuant to an investigation into his guilt, section 821.6 does not confer immunity from those claims upon Defendants.”); *Bell v. State*, 74 Cal. Rptr. 2d 541, 547 (Cal. Ct. App. 1998) (holding that § 821.6 did not apply to an arrest because the officers were merely executing a warrant, not investigating crime). One California court noted in dicta, however, that “an arrest could be considered to be part of the investigation leading up to a judicial proceeding,” but the court provided no guidance as to when an arrest should be deemed part of an investigation. *Amylou R.*, 34 Cal. Rptr. 2d at 322 n.2. The City’s statement of the law—that § 821.6 immunizes the City from liability for any injury resulting from an arrest—is therefore inaccurate. There is no *per se* rule that public entities are immune from liability if causes of action arise from an arrest.

Regardless, Kohli’s complaint contains so few facts that it is unclear whether an arrest ever occurred or whether his defamation, IIED, and NIED claims arise from arrests, 5150 detentions, or other police conduct. To plead a plausible defamation claim, a plaintiff must allege facts showing “the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage.” *Smith v. Maldonado*, 85 Cal. Rptr. 2d 397, 402 (Cal. Ct. App. 1999). To plead IIED, a plaintiff must allege facts showing “(1) extreme and outrageous conduct by the defendant with the

1 intention of causing, or reckless disregard of the probability of causing, emotional distress;
 2 (2) the plaintiff's . . . severe or extreme emotional distress; and (3) actual and proximate
 3 causation of the emotional distress by the defendant's outrageous conduct.” *Hughes v. Pair*,
 4 209 P.3d 963, 976 (Cal. 2009) (internal quotation marks omitted). Because NIED is not an
 5 independent tort, but rather a type of negligence, a plaintiff pleading NIED must allege facts
 6 showing “duty, breach of duty, causation, and damages[.]” *Burgess v. Superior Court*, 831
 7 P.2d 1197, 1200 (Cal. 1992).

8 Kohli’s complaint contains insufficient factual content to plead the elements of
 9 defamation, IIED, and NIED. In support of these claims, Kohli alleges only that the SFPD
 10 intentionally harassed and embarrassed him in front of his community and that, as a result
 11 of police conduct, he lost his residence and suffered damages to his reputation, emotional
 12 well-being, and mental health. Dkt. No. 1, at 9-10. Kohli fails to specify when the SFPD
 13 made a statement about him, which officer made the statement, what the officer said, why
 14 the statement injured him, what kind of emotional distress he suffered, why police conduct
 15 was extreme and outrageous under the circumstances, how and why the events caused
 16 emotional distress, why the police owed him a duty of care, and how the police breached
 17 their duty of care. Because Kohli’s complaint lacks sufficient factual specificity to plead
 18 the elements of defamation, IIED, and NIED, the Court grants the City’s motion to dismiss
 19 those claims. However, because it is not clear that § 821.6 immunizes the City from
 20 liability on the facts of Kohli’s complaint, the Court gives Kohli leave to amend if he can
 21 allege additional facts from which the court can reasonably infer that the City is liable for
 22 these claims.

23 **IV. ORDER TO SHOW CAUSE**

24 The Court issues this order to address concerns regarding Kohli’s failure to prosecute
 25 his case. Kohli did not respond to the City’s motion to dismiss. He then moved for
 26 voluntary dismissal, but later retracted his motion. Dkt. Nos. 12, 17. Kohli then asked for a
 27 continuance, which the Court did not grant. Dkt. No. 17. On January 8, 2014, Kohli failed
 28 to appear for the City’s motion hearing. Dkt. No. 19. Kohli must follow court rules, even

1 though he is not a lawyer. Kohli's failure to comply with court rules provides separate
2 grounds for dismissal. *Hernandez v. City of El Monte*, 138 F.3d 393, 400 (9th Cir. 1998)
3 ("The district court has the inherent power sua sponte to dismiss a case for lack of
4 prosecution."). The Court therefore puts Kohli on notice that if he fails to properly amend
5 his complaint within 28 days from this order or fails to comply with any court rule or order,
6 the Court may dismiss his case with prejudice.

7 For guidance, Kohli may refer to the Court's Pro Se Handbook, available on the
8 Court's website at <http://www.cand.uscourts.gov/prosehandbook>, or contact the Legal Help
9 Center, which provides information and limited-scope legal advice to pro se litigants in civil
10 cases. The Legal Help Center requires an appointment, which can be made by calling (415)
11 782-8982.

12 V. CONCLUSION

13 For the foregoing reasons, the Court grants the City's motion to dismiss as to all
14 claims, but gives Kohli leave to amend within 28 days if he can allege facts with enough
15 specificity to allow the court to reasonably infer that the City is liable for the claims alleged.
16 If Kohli does not properly amend his complaint within 28 days, the Court may dismiss his
17 case with prejudice. Because the Court grants the City's motion to dismiss, the Court
18 denies the City's motion for a more definite statement as moot. Finally, the Court sets a
19 further case management conference for 10:00 a.m. on April 2, 2014. A joint case
20 management conference statement is due on March 31, 2014.

21
22 IT IS SO ORDERED.

23 Date: January 28, 2014

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25 Nathanael M. Cousins
26 United States Magistrate Judge
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